

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RACHELL PERMENTER,

Plaintiff,

CASE NO.:

-VS-

MIDLAND CREDIT MANAGEMENT, INC.,

Defendant.

COMPLAINT

1. Plaintiff alleges violation of the Telephone Consumer Protection Act, 47 U.S.C. §227 *et seq.* (“TCPA”), the Florida Consumer Collection Practices Act, Fla. Stat. §559.55 *et seq.* (“FCCPA”) and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et. seq.* (“FDCPA”).

INTRODUCTION

2. The TCPA was enacted to prevent companies like MIDLAND CREDIT MANAGEMENT, INC. from invading American citizen’s privacy and prevent abusive “robo-calls.”

3. “The TCPA is designed to protect individual consumers from receiving intrusive and unwanted telephone calls.” *Mims v. Arrow Fin. Servs., LLC*, -US--, 132 S.Ct. 740, 745, 181 L.Ed. 2d 881 (2012).

4. “Senator Hollings, the TCPA’s sponsor, described these calls as ‘the *1256 scourge of modern civilization, they wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone out of the wall.’ 137 Cong. Rec. 30, 821 (1991). Senator Hollings presumably intended to give

telephone subscribers another option: telling the autodialers to simply stop calling.” *Osorio v. State Farm Bank, F.S.B.*, 746 F. 3d 1242 (11th Cir. 2014).

5. According to the Federal Communications Commission (FCC), “Unwanted calls and texts are the number one complaint to the FCC. There are thousands of complaints to the FCC every month on both telemarketing and robocalls. The FCC received more than 215,000 TCPA complaints in 2014.” <https://www.fcc.gov/document/fact-sheet-consumer-protection-proposal>

JURISDICTION AND VENUE

6. Jurisdiction and venue for purposes of this action are appropriate and conferred by 28 U.S.C. §1331.

7. The alleged violations described in the Complaint occurred in Hillsborough County, Florida.

FACTUAL ALLEGATIONS

8. Plaintiff is a natural person, and citizen of the State of Florida, residing in Zephyrhills, Hillsborough County, Florida

9. Plaintiff is a “consumer” as defined in Florida Statute 559.55(8) and 15 U.S.C. § 1692(a)(3).

10. Plaintiff is an “alleged debtor.”

11. Plaintiff is the “called party.” See *Breslow v. Wells Fargo Bank, N.A.*, 755 F. 3d 1265 (11th Cir. 2014) and *Osorio v. State Farm Bank, F.S.B.*, 746 F. 3d 1242 (11th Cir. 2014).

12. Defendant, , is a corporation which was formed in Kansas with its principal place of business at 3111 Camino Del Rio North, Ste. 1300, San Diego, CA 92108, and conducting business in the state of Florida through its registered agent, Corporation Service Company, 1201 Hays Street, Tallahassee, FL 32301.

13. Defendant is a “debt collector” as defined by Florida Statute § 559.55(7) and 15 U.S.C. § 1692(a)(6).

14. The debt that is the subject matter of this complaint is a “consumer debt” as defined by Florida Statute §559.55(6) and U.S.C. § 1692(a)(5).

15. Defendant intentionally harassed and abused Plaintiff on numerous occasions by calling several times during one day, and on back to back days, with such a frequency as can be reasonably expected to harass.

16. Defendant attempted to collect a debt from the Plaintiff by this campaign of telephone calls.

17. Upon information and belief, each call made to the Plaintiff was made using an “automatic telephone dialing system” which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers as specified by 47 U.S.C §227(a)(1).

18. Furthermore, upon information and belief, each of the calls at issue were placed by the Defendant using a “prerecorded voice,” as specified by the TCPA, 47 U.S.C. § 227 (b)(1)(A).

19. None of Defendant’s telephone calls placed to Plaintiff were for “emergency purposes” as specified in 47 U.S.C. §227(b)(1)(A).

20. Plaintiff is the regular user and carrier of the cellular telephone number at issue, (813) 399-1090, and was the called party and recipient of Defendant’s above described calls.

21. Plaintiff has never provided Defendant with her aforementioned cellular telephone number, nor has she ever provided verbal or express consent for Defendant to call her aforementioned cellular telephone number.

22. In or about 2011, Plaintiff received a telephone call to her aforementioned cellular telephone number from Defendant seeking to recover a debt. Upon receipt of the calls from Defendant, Plaintiff's caller ID identified the calls were being initiated from, but not limited to, the following phone numbers: (877) 411-5551 and (866) 406-7565.

23. In or about July of 2011, Plaintiff answered a call from the Defendant, received the Defendant's automated message stating that the calls were being recorded and to please hold the line for the next available representative, eventually connected with an agent/representative of Defendant named "Sirus Colt," and informed Defendant that she did not owe the debt for which they were calling, and demanded that Defendant stop calling her aforementioned cellular telephone number.

24. In or about July of 2011, during the aforementioned phone conversation with Defendant's agent/representative "Sirus Colt," Plaintiff expressly revoked any express consent Defendant may have mistakenly believed it had for placement of telephone calls to Plaintiff's aforementioned cellular telephone number by the use of an automatic telephone dialing system or a pre-recorded or artificial voice.

25. Again, in or about 2012, due to the ceaseless barrage of phone calls received to her aforementioned cellular telephone number from Defendant, Plaintiff answered a call from the Defendant, received the Defendant's automated message stating that the calls were being recorded and to please hold the line for the next available representative, spoke with an agent/representative of Defendant and informed Defendant that she had previously provided Defendant with all requested documentation required to dispute the debt, that she had disputed the debt with the three credit bureaus, and demanded again that they stop calling her aforementioned cellular telephone number, to which Defendant's agent/representative informed

Plaintiff that she was refusing to pay, and Defendant would continue to call and report the debt on her credit until she pays it.

26. On a separate occasion, Plaintiff again answered a call from Defendant, followed the prompts to be connected with a live representative, spoke with a female agent/representative of Defendant and questioned the Defendant as to how they acquired Plaintiff's cellular telephone number, to which Defendant's agent/representative informed Plaintiff that they "have ways of finding people."

27. On approximately ten (10) occasions since about July of 2011, Plaintiff answered a call from the Defendant, received the Defendant's automated message to please hold the line for the next available representative, spoke with an agent/representative of Defendant and informed them that she had previously asked Defendant to stop calling her aforementioned cellular telephone number, that she does not owe the alleged debt, and again demanded that Defendant stop calling her.

28. Despite actual knowledge of their wrongdoing, and that they did not have Plaintiff's consent, the Defendant continued its barrage of phone calls to Plaintiff's aforementioned cellular telephone number in an attempt to collect a debt.

29. Defendant intentionally harassed and abused Plaintiff on numerous occasions by calling several times during one day, and on back to back days, with such frequency as can reasonably be expected to harass.

30. Each of Plaintiff's conversations with the Defendant demanding an end to the harassment were ignored.

31. From about July of 2011 through the filing of this Complaint, Defendant placed approximately three-hundred fifty (350) automated calls to Plaintiff's aforementioned cellular telephone (or as will be established after a thorough review of Defendant's records), despite the

Plaintiff never providing consent for Defendant to call her aforementioned cellular telephone number, and revoking any consent Defendant may have mistakenly believed they had to place calls to her aforementioned cellular telephone number.

32. Each call Defendant made to the Plaintiff's aforementioned cellular telephone number was done so without the "express permission" of the Plaintiff.

33. Plaintiff did not expressly consent to Defendant's placement of telephone calls to Plaintiff's aforementioned cellular telephone by the use of an automatic telephone dialing system or a pre-recorded or artificial voice prior to Defendant's placement of the calls.

34. Plaintiff expressly revoked consent Defendant may have mistakenly believed it had for placement of telephone calls to Plaintiff's aforementioned cellular telephone by the use of an automatic telephone dialing system or a pre-recorded or artificial voice.

35. Defendant's corporate policy and procedures is structured as to continue to call individuals like the Plaintiff, despite these individuals revoking any consent the Defendant may have mistakenly believed it had.

36. Defendant's, corporate policy and procedures provided no means for the Plaintiff to have her aforementioned cellular number removed from the call list.

37. Defendant has a corporate policy of using an automatic telephone dialing system or a prerecorded or artificial voice message to collect debts from individuals such as Plaintiff for its financial benefit.

38. Defendant has numerous other federal lawsuits pending against them alleging similar violations as stated in this complaint. The Defendant has been sued civilly in Federal Court over 1,536 times in the last three (3) years.

39. In the last three (3) years, the Defendant has had 1,011 complaints reported to the Better Business Bureau (BBB). See <http://www.bbb.org/sdoc/business-reviews/financial-services/midland-credit-management-inc-in-san-diego-ca-101104/complaints#breakdown>.

40. Defendant violated the TCPA with respect to the Plaintiff.

41. Defendant willfully or knowingly violated the TCPA with respect to the Plaintiff.

COUNT I
(Violation of the TCPA)

42. Plaintiff incorporates Paragraphs one (1) through forty-one (41).

43. Defendant caused placement of non-emergency telephone calls to Plaintiff's cellular telephone using an automatic telephone dialing system or prerecorded or artificial voice without Plaintiff's prior express consent in violation of federal law, including 47 U.S.C § 227(b)(1)(A)(iii).

44. Defendant willfully and knowingly caused placement of non-emergency telephone calls to Plaintiff's cellular telephone using an automatic telephone dialing system or prerecorded or artificial voice without Plaintiff's prior express consent in violation of federal law, including 47 U.S.C § 227(b)(1)(A)(iii).

WHEREFORE, Plaintiff respectfully demands a trial by jury on all issues so triable and judgment against Defendant for statutory damages, punitive damages, actual damages and any other such relief the court may deem just and proper.

COUNT II
(Violation of the FCCPA)

44. Plaintiff incorporates Paragraphs one (1) through forty-one (41).

45. At all times relevant to this action Defendant is subject to and must abide by the law of Florida, including Florida Statute § 559.72.

46. Defendant has violated Florida Statute §559.72(7) by willfully communicating with the debtor or any member of her or his family with such frequency as can reasonably be expected to harass the debtor or her or his family.

47. Defendant has violated Florida Statute §559.72(7) by willfully engaging in conduct which can reasonably be expected to abuse or harass the debtor or any member of her or his family.

48. Defendant has violated Florida Statute §559.72(9) by attempting to enforce a debt when Defendant knows that the debt is not legitimate or assert the existence of some legal right when Defendant knows that right does not exist.

49. Defendant's actions have directly and proximately resulted in Plaintiff's prior and continuous sustaining of damages as described by Florida Statute §559.77.

WHEREFORE, Plaintiff respectfully demands a trial by jury on all issues so triable and judgment against Defendant for statutory damages, punitive damages, actual damages, costs, interest, attorney fees and any other such relief the court may deem just and proper.

COUNT III
(Violation of the FDCPA)

50. Plaintiff incorporates Paragraphs one (1) through forty-one (41).

51. At all times relevant to this action, Defendant is subject to and must abide by 15 U.S.C. § 1692 *et seq.*

52. Defendant engaged in an act or omission prohibited under 15 U.S.C. § 1692(d) by willfully engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

53. Defendant engaged in an act or omission prohibited under 15 U.S.C. § 1692(d)(5) by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

54. Defendant engaged in an act or omission prohibited under 15 U.S.C. § 1692(f) by using unfair and unconscionable means to collect or attempt to collect any debt.

WHEREFORE, Plaintiff respectfully demands a trial by jury on all issues so triable and judgment against for statutory damages, punitive damages, actual damages, costs, interest, attorney fees and any other such relief the court may deem just and proper.

Respectfully submitted,

s/Amanda Allen

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